

Attorney Docket No. 016770-002721US

REMARKS**Present Status of Patent Application**

Claim 40 has been amended. Support for the amendment to claim 40 is found in applicants' specification at least in FIG 10 and paragraph 0079. Claims 40-43 remain pending.

Rejection Under 35 U.S.C. § 103(a)

The Claims 40-43 were rejected under 35 USC §103(a) over *Robertson et al.*, U.S. 5,487,378 in view of *Marks et al.* U.S. 5,976,344 and/or *Abys et al.*, U.S. 5,529,055.

It was asserted that it would be obvious to electroform an aperture plate using a palladium or palladium metal alloy.

As an initial matter, Robertson is devoid of any teaching suggestion or disclosure of a dome-shaped aperture plate. Robertson depicts and discloses only flat (linear) aperture plates. Applicants thus continue to contend that Robertson is inapposite, and indeed, teaches away from applicants' claimed invention.

As reiterated by the Supreme Court in *KSR International Co. v. Teleflex Inc.*, S. Ct. 1727 (2007); 82 USPQ2d 1385, 1397 (2007), the factors stated in *Graham v. John Deere*, 383, U.S. 1, 148 USPQ 459 (1966) still control an obviousness inquiry. That is to say, the considerations which must be followed in an inquiry directed to the obviousness or non-obviousness of an invention are as follows:

- i. The claimed invention must be considered as a whole;
- ii. The references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; and
- iii. The references must be viewed without the benefit of hindsight afforded by the claimed invention or accompanying specification.

In conducting the above analysis, one must consider the level of ordinary skill in the art at the time of the invention, as well as whether there exists a reasonable expectation of success.

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With specific reference in the nonobviousness analysis to the question of whether one element of a set teaches the remainder, the Court in *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1537, 218 USPQ 871, 877 (Fed. Cir. 1983), noted that "the question under 35 U.S.C. § 103 is not whether the differences [between the claimed invention and the prior art] would have been obvious" but "whether the claimed invention as a whole would have been obvious." (emphasis in original). Thus nonobviousness must be analyzed in terms of whether Robertson alone, or combined with Marks and/or Abys teaches the entire invention as claimed comprising, *inter alia*, a dome-shaped palladium or palladium alloy aperture plate, and not merely one of whether palladium is sufficiently similar to nickel.

Moreover, the prior art must be evaluated and applied from the standpoint of the hypothetical person having ordinary skill in the art at the time the claimed invention was made. See, *Ryko Mfg. Co. v. Nu-Star Inc.*, 950 F.2d 714, 718, 21 USPQ2d 1053, 1057 (Fed. Cir. 1991).

That Robertson teaches away from palladium is also evidenced by the fact that Robertson **does not imply that other than nickel is suitable** since Robertson does not refer to nickel as preferred, optimum, typical or any other qualifier that would imply other members.

Thus, In view of its limitation to nickel as the substrate for electroforming, the disclosure of *Robertson et al.*, teaches away from the use of any other metal. Nor is there any disclosure, teaching or suggestion in Robertson of an alloy comprised of about 80% palladium and about 20% nickel, as recited in claim 43.

Applicants again respectfully submit the Office's burden has not been met, because there is no objective reason why one skilled in the art, when reviewing the *Robertson et al.* reference, which teaches an aerosol generator made of nickel, would be motivated to replace the material with an **electroformed** palladium or palladium alloy, merely because such materials are generally disclosed in the **electrodeposition** art (*Abys et al.* and/or *Marks et al.*)

For these reasons, Applicants submit that claim 40 is allowable over the cited references.

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Finally, claims 41-43 are dependent upon claim 40. If independent claim 40 is allowable over the prior art of record, then its dependent claims, are allowable as a matter of law, because these dependent claims contain all features/elements/steps of their respective independent claim. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988). Additionally and notwithstanding the foregoing reasons for the allowability of claim 40, these dependent claims recite further features/steps and/or combinations of features/steps (as is apparent by examination of the claims themselves) that are patentably distinct from the prior art of record. Hence, there are other reasons why these dependent claims are allowable.

CONCLUSION

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

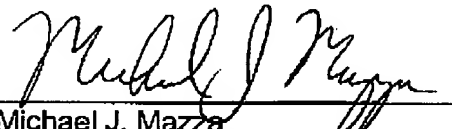
If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-283-6790.

Respectfully submitted,
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4/11/08

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